NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**
   R9-22-718 — New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
   Authorizing statute: Laws 1996, Ch. 288, §§ 20, 21, and 22

   Implementing statute: Laws 1996, Ch. 288, §§ 20, 21, 22, and 24

3. **The effective date of the rules:**
   January 29, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**
   2 A.A.R. 4106, September 27, 1996 (Notice of Rulemaking Docket Opening)
   2 A.A.R. 4152, October 4, 1996 (Notice of Proposed Rulemaking)

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Cheri Tomlinson AHCCCS Office of Policy Analysis and Coordination
Address:	801 East Jefferson, MD4200 Phoenix, Arizona 85034
Telephone:	(602) 417-4198
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6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**
   This hospital reimbursement pilot rule is presented to establish a market competition model for hospital reimbursement. AHCCCS currently regulates the aggregate payments that health plans may make to hospitals. This rule will put in place a pilot competitive model. Health plans in urban areas are required to contract directly with hospitals and negotiate rates of payment. The market, not AHCCCS, would determine these rates. The proposal also recognizes that some hospitals and health plans may not be able to reach agreement in the short term. For these circumstances and for emergency cases in non-contracting hospitals, there is a default of 5% less than the tiered per diem rates in effect September 30, 1997, which is immediately prior to the pilot. The hospitals and health plans may use independent arbitration in lieu of the agency's grievance process to resolve contact disputes.

   The rationale for this rule is that AHCCCS is based on the principles of competition. Rates set by AHCCCS are in direct conflict with competitive model. Health care practices are also changing rapidly; so through negotiations payment arrangements can be more flexible in recognizing these changing practices. Further, AHCCCS will continue to be exposed to litigation if it regulates payments between hospitals and health plans. Urban areas offer a sufficient number of hospitals and health plans for competition.

   Laws 1996, Ch. 288, §§ 20, 21, and 22 require the agency to implement the inpatient hospital pilot program. In addition, Laws 1996, Ch. 288, § 24 describes how the rules relating to inpatient hospital reimbursement program shall be adopted.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   Not applicable.

8. **The summary of the economic, small business, and consumer impact:**
   A current goal at the national and local political levels is to downsize government and encourage government deregulation in areas where market competition can have a positive effect on cost. Therefore, AHCCCS would like to move 1 more step toward creating

a less regulated environment for our managed care program by establishing a competitive model. As a result of competition, AHCCCS health plans reduced capitation rates by 11% in the last bid cycle.

When the population covered by AHCCCS, and the cost of medical care, are considered, there is significant economic benefit available in establishing a competitive model. Approximately 11% of Arizonans are served by AHCCCS. However, this population accounts for 23% of all hospital payments in Arizona. In addition, almost half of all births in Arizona are paid for by AHCCCS. Maricopa and Pima counties comprise approximately 75% of total AHCCCS membership. Health plans and hospitals are dependent upon each other for success. This pilot will force these groups to work more closely with each other.

9. **A description of the changes between the proposed rules, including supplemental notes, and final rules (if applicable):**
The AHCCCS Administration has made minimal changes between the proposed rules and the final rules. This is primarily due to the fact that the AHCCCS Administration provided hospitals and health plans with a "courtesy copy" of the drafted rule packet prior to submitting the proposed rule to the Secretary of State.

Hospitals and health plans submitted some comments on the draft rule to the Administration, and some of the comments were incorporated into the proposed rulemaking package that was submitted to the Secretary of State. The substantive differences between the proposed rule and exempt rule include:

- Clarifying the subsection on arbitration in R9-22-718(C)(1)(c); and
- Clarifying the purpose of evaluation contractors' use of contracted and noncontracted hospitals in R9-22-718(C)(3).

10. **A summary of the principal comments and the agency response to them:**
AHCCCS, being responsible for the Medicaid managed care system within Arizona, intends to allow for market competition. Laws 1996, Ch. 288, § 20 requires specific action as noted by the following statements:

- *The Arizona Health Care Cost Containment System shall establish and operate a pilot program for inpatient hospital reimbursement in any county with a population of more than five hundred thousand persons...*
- *The director may review and approve or disapprove the reimbursement levels, terms and conditions agreed on by the prepaid capitated provider and the hospital.*
- *If a prepaid capitated provider and a hospital do not enter into a contract pursuant to subsection B of this section, the reimbursement level for inpatient services for that hospital shall be the reimbursement level defined in A.R.S. § 36-2903.01, as of September 30, 1997 multiplied by ninety-five per cent.*

In part, the intent of this rule is to identify the minimum of what we expect to see in terms and conditions of the contract, without regulating the specifics of the contract. This will allow the market to work. AHCCCS requires the plans to have hospital contracts in order to receive a contract award in the RFP process; so irrespective of a decline in rates, plans will have to contract with hospitals. The reason there is a Pilot is to test what is feasible for the health care market and reduce dependence on AHCCCS setting rates.

Geographic requirements will be limited to allow for adequate competition, thus avoiding situations that create a "lone" hospital. Plans will be monitored and will need to explain any frequent use of noncontracted hospitals. It is up to the Plan as to which hospitals it contracts with; therefore, we do not feel we are "mandating the use of specific hospitals." Further, to ensure appropriate access to care for our members, we must require some hospital contracts.

During the Joint Legislative Committee hearing process, AHCCCS and Arizona Hospital and Healthcare Association (AzHHA) were requested to meet, and the following items were agreed upon:

- AHCCCS will not amend the proposed rule to inflate the default rate;
- AHCCCS and AzHHA will meet on at least a quarterly basis to review the progress of the pilot and identify and resolve issues as they arise; and
- AHCCCS will address issues related to unusual use of noncontracted facilities through health plan contract requirements and vigilant monitoring.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

12. **Incorporations by reference and their location in the rules:**
Not applicable.

13. **Was this rule previously adopted as an emergency rule?**
No.

14. **Full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section
R9-22-718. Inpatient Hospital Reimbursement Pilot Program

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-718. Inpatient Hospital Reimbursement Pilot Program

A. Definitions. In this Section, the following definitions apply:
1. "Contractor" means Maricopa and Pima organizations or entities as defined in Laws 1996, Ch. 288, § 20, which agree through a direct contracting relationship with the Administration to provide services as described by A.R.S. § 36-2901 or 36-2902. A contractor also includes the Department of Economic Security - Developmental Disabilities, who delivers medical and long-term care services to eligible Arizona Long-term Care members.
2. "Hospital Contracts" means a contract between a contractor and hospital provider.
3. "RFP" means a request for proposal as prescribed by A.A.C. R9-28-101(54), R9-22-603, and R9-28-604.

B. General Provisions. The Administration shall operate a hospital reimbursement pilot program in which contractors in Maricopa and Pima Counties shall enter into hospital contracts with 1 or more hospitals in geographical service areas within these counties. The geographic service area may vary from official county boundaries in certain zip codes bordering Maricopa and Pima Counties. The Administration shall specify any variations in its RFP. These hospital contracts shall cover inpatient acute care hospital services for eligible persons with admissions on and after October 1, 1997, as follows:
1. Expiration date. The Hospital Reimbursement Pilot shall be effective until September 30, 2000.
2. Outpatient hospital services. As prescribed in A.A.C. R9-22-705 and R9-28-705, outpatient hospital services, including observation days and emergency room treatments that do not result in an admission, may be reimbursed either through a hospital contract negotiated between a contractor and a hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01(J). Outpatient hospital services that result in an admission shall be included in this pilot.
3. Out-of-area hospital services. Payment to hospitals outside of Maricopa and Pima Counties are not included in the pilot.
4. Exclusions. A contractor shall not be:
   a. The Arizona Department of Health Services, Behavioral Health and Children Rehabilitative Services;
   b. Tribal governments;
   c. Department of Economic Security - Comprehensive Medical Dental Plan; and
   d. Health Care Group.

C. Hospital Contracts. The AHCCCS Director may approve or disapprove hospital contracts.
1. Provisions of hospital contracts. The provisions of the hospital contract must contain but are not limited to the following:
   a. Required provisions as described in A.A.C. R9-22-403 or R9-28-603;
   b. Dispute settlement procedures. If the grievance and appeal procedure prescribed in A.R.S. § 36-2903.01(B) and A.A.C. R9-22-801 through R9-22-805 and R9-28-801 through R9-28-804 is not used, then arbitration shall be used.
   c. Arbitration procedure. If arbitration is to be used, the contract shall identify:
      i. The parties' agreement on arbitrating claims arising from the contract,
      ii. Whether arbitration is nonbinding or binding,
      iii. Timeliness of arbitration,
      iv. What contract provisions may be appealed,
      v. What rules will govern arbitrations,
      vi. The number of arbitrators that will be used,
      vii. How arbitrators will be selected, and
      viii. How arbitrators will be compensated.
   d. Timeliness of claims submission and payment;
   e. Prior authorization;
   f. Concurrent review;
   g. Electronic submission of claims;
   h. Claims review criteria;
   i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
   j. Payment of outliers;
   k. Claim documentation specifications which meet the requirements of Laws 1996, Ch. 288, § 20;
   l. Treatment and payment of emergency room services; and
   m. Provisions for rate changes and adjustments.
2. AHCCCS review and approval of hospital contracts.
   a. The Administration may review, approve, or disapprove the hospital contract rates, terms, and conditions as well as any amendments to the contract.
   b. The contractor shall submit hospital contracts and amendments as specified in the RFPs for the contract year beginning October 1, 1997, or as specified in the RFP for new hospital contracts negotiated after October 1, 1997.
   c. The evaluation of each hospital contract shall include but not be limited to the following areas:
      i. Availability and accessibility of services to members,
      ii. Related party interests,
      iii. Inclusion of required terms pursuant to this Section, and
      iv. Reasonableness of the rates.
3. Evaluation of contractor's use of noncontracted hospitals. The Administration shall evaluate the contractor's use of contracted versus noncontracted hospitals pursuant to A.A.C. R9-22-603 or R9-28-604. The purpose of this evaluation is to encourage use of contracted facilities as opposed to noncontracted facilities.
4. Marketing materials. The Administration shall monitor the marketing of hospital networks in accordance with R9-22-504 and R9-22-505. A contractor must have an AHCCCS-approved contract with a hospital to include the hospital in that contractor's marketing materials.

D. Transplants. In no case may a contractor's rate exceed the rate established by the Administration for an acute care inpatient stay in which a covered transplant was performed that quali-

fied for catastrophic reinsurance. The contractor may either reimburse the hospitals through the terms of the hospital contract or, in the absence of a hospital contract, at the specialty hospital contract rate established by the Administration pursuant to R9-22-712(A)(4).

E. Noncontracted hospital provider. In the absence of a hospital contract between a Maricopa or Pima County contractor and hospital, the contractor shall pay the hospital for inpatient services based on the tiered per diem rates for that hospital as defined in A.R.S. § 36-2903.01 and A.A.C. R9-22-712, as of September 30, 1997, multiplied by 95%, unless otherwise negotiated by both parties. If at any time graduate medical education is reimbursed by the Administration outside of the tier rates, the Administration shall adjust the tier rates in effect as of September 30, 1997, accordingly. The contractors shall meet the requirements prescribed in A.A.C. R9-22-705 and R9-28-705.

1. No annual adjustments. The Administration shall make no annual adjustments to these tiered per diem rates for:
   a. Inflation,
   b. Capital costs,
   c. Changes in length of stay, and
   d. Changes made in the rates as a result of rebasing the tiered per diems system pursuant to A.R.S. § 36-2903.01(J).
2. Outlier policy. When there is no pilot negotiated hospital contract, reimbursement of outliers is based upon updated outlier thresholds, and 95% of the statewide average cost-to-charge ratio in effect on September 30, 1997.
3. Quick-pay/slow-pay policy. Payments made to noncontracted hospitals shall be subject to quick-pay discounts and slow-pay penalties in accordance with Laws 1993, Ch. 6, § 29; Laws 1992, Ch. 302, § 14, as amended by Laws 1993, Ch. 6, § 27; and A.R.S. § 36-2904.
4. New hospitals or hospital tiers. For any new hospitals or hospital tiers that are established after September 30, 1997, the tiered per diem rate that would have been established for new hospitals on September 30, 1997, as prescribed in R9-22-712, will be paid at 95%.

F. Reinsurance, For contractors in Maricopa and Pima Counties, reinsurance thresholds shall be calculated pursuant to A.A.C. R9-22-503 or R9-28-709.